

both.²⁰³ Tennis Channel has acknowledged internally that the widespread online availability of its events [REDACTED]

[REDACTED]²⁰⁴

82. Mr. Egan further testified that much of Golf Channel's non-event programming features non-golf celebrities and reality shows, which broadens the network's appeal beyond hard-core golf fans.²⁰⁵ In contrast, the little non-event programming that Tennis Channel airs – such as the tennis documentary series *Best of 5* and the travel show *Destination Tennis* – relates almost exclusively to tennis, and the celebrities featured in it are famous tennis players like Tracy Austin, Jimmy Connors, and Lindsay Davenport, which does nothing to broaden Tennis Channel's appeal beyond tennis fans.²⁰⁶ Mr. Egan's testimony regarding the narrowness of Tennis Channel's appeal is corroborated by Tennis Channel's own research, which found that its viewers tend to be [REDACTED]²⁰⁷

83. Mr. Egan testified that much of Tennis Channel's programming consists of repeated event coverage,²⁰⁸ and that it is not uncommon for Tennis Channel to air the

²⁰³ Comcast Exh. 77 (Egan Written Direct) ¶¶ 42-44; *see, e.g.*, Comcast Exh. 647 (over [REDACTED] of Tennis Channel's hours in the week of September 13, 2010 consisted of events previously or simultaneously aired on CBS, ESPN2, ESPN3, or USOpen.org).

²⁰⁴ Comcast Exh. 177.

²⁰⁵ Comcast Exh. 77 (Egan Written Direct) ¶¶ 54-56; Egan Direct Apr. 28, 2011 Tr. 1508:13-1516:2 (listing Golf Channel programs featuring Donald Trump, Ray Romano, Charles Barkley, and Mark Wahlberg).

²⁰⁶ Solomon Direct, Apr. 25, 2011 Tr. 263:14-22); Egan Direct, Apr. 28, 2011 Tr. 1516:9; Comcast Exh. 77 (Egan Written Direct) ¶¶ 32-35.

²⁰⁷ Comcast Exh. 184 at TTCCOM_00061856.

²⁰⁸ Egan Direct, Apr. 28, 2011 Tr. 1555:4-1556:3, 1559:18-1560:14. In fact, more than half { [REDACTED] } of Tennis Channel's event hours consist of events that had

same match at least five times.²⁰⁹ Similarly, much of Tennis Channel's non-event programming consists of re-runs of episodes that had premiered at least a year before.²¹⁰

84. Mr. Egan testified that Tennis Channel's programming mix also differs from Versus's programming mix. Unlike Tennis Channel, Versus covers nearly two dozen sports, including hundreds of live NHL game broadcasts, both regular season and postseason (including two games of the Stanley Cup Finals), college football, professional basketball, IndyCar racing, cagefighting, and the Tour de France.²¹¹ Versus also places significantly more emphasis on non-event programming than Tennis Channel does. Notably, Versus devotes nearly [REDACTED] of its schedule to outdoor programming alone. Its "hooks and bullets" outdoor sports programming includes shows like *Elk Fever*, *Jimmy Houston's Outdoors*, and the extreme hunting show *Federal Premium Dangerous Game*.²¹²

concluded more than [REDACTED] days earlier, compared to only [REDACTED] for Golf Channel. (Comcast Exh. 77 (Egan Written Direct) ¶ 47).

²⁰⁹ Comcast Exh. 77 (Egan Written Direct) ¶¶ 22-23. Mr. Solomon testified that Tennis Channel would repeat the same taped tennis match seven or eight different times "if it's a great match . . . that becomes a classic match," such as a brand-named player in a Grand Slam tournament. (Solomon Direct, Apr. 25, 2011 Tr. 471:1-8). However, Mr. Solomon conceded that Tennis Channel aired a match from a tournament in South Africa featuring two players currently outside of the top forty in the world seven times within two weeks – none of them live. (Comcast Exh. 723; Solomon Cross, Apr. 25, 2011 Tr. 472:4-474:4; *see also* Comcast Exh. 77 (Egan Written Direct) ¶ 22 (listing other examples of matches aired by Tennis Channel multiple times). Tennis Channel counted each of those broadcasts as "anchor event programming," a term Tennis Channel has used to describe "our best programming." (Solomon Cross, Apr. 25, 2011 Tr. 526:5-11).

²¹⁰ Comcast Exh. 77 (Egan Written Direct) ¶ 35.

²¹¹ Comcast Exh. 77 (Egan Written Direct) ¶¶ 57-59.

²¹² Comcast Exh. 77 (Egan Written Direct) ¶¶ 57-59; Egan Direct, Apr. 28, 2011 Tr. 1535:7-1536:15, 1537:8-1538:8, 1539:2-13.

4. *Tennis Channel's audience is materially different from Golf Channel's and Versus's audiences*

85. The weight of the evidence, including the credible expert testimony and Tennis Channel's own documents, establishes that there are material differences between Tennis Channel viewers and Golf Channel and Versus viewers. Tennis Channel's own research indicates that less than {REDACTED} of Tennis Channel viewers watch the Golf Channel.²¹³ Because the networks' audiences are different, Tennis Channel successfully pitched {REDACTED} on the grounds that advertising on Tennis Channel {REDACTED} {REDACTED} advertising on Golf Channel.²¹⁴

86. Unlike Tennis Channel, Golf Channel and Versus have overwhelmingly male audiences. Nearly {REDACTED} of Versus viewers are men – the most of any cable network – and nearly {REDACTED} Golf Channel viewers are men, among the highest of all cable networks.²¹⁵ In contrast, only a {REDACTED} of Tennis Channel viewers are men – by far the lowest of any sports network – placing Tennis Channel in the company of “general appeal” networks like WGN and MTV2.²¹⁶ Tennis Channel documents show

²¹³ Comcast Exh. 11 at TTCCOM_00027627; Comcast Exh. 186 at TTCCOM_00062216; Comcast Exh. 230 at TTCCOM_00062364; Comcast Exh. 368 (Herman Dep.) 317:21-319:3.

²¹⁴ Comcast Exh. 11 at TTCCOM_00027627; Herman Cross, Apr. 26, 2011 Tr. 669:22-670:5; Comcast Exh. 368 (Herman Dep.) 323:14-19.

²¹⁵ Comcast Exh. 77 (Egan Written Direct) ¶¶ 86, 89-90; Comcast Exh. 663; Comcast Exh. 51 at TTCCOM_00051436; *see also* Comcast Exh. 215 at TTCCOM_00021827; Comcast Exh. 800 at TTCCOM_00070616-17.

²¹⁶ Comcast Exh. 77 (Egan Written Direct) ¶¶ 86, 89-90; Comcast Exh. 349 (Brooks Dep.) 318:11-16.

that it regularly cited its [REDACTED] in pitches to MVPDs and other companies, including in its 2009 proposal to Comcast.²¹⁷

87. The weight of the reliable evidence does not support Tennis Channel's claim that its viewers are similar to Golf Channel and Versus viewers in terms of income. Experian Simmons data for the last four quarters for which data is available (fall 2009 through summer 2010) consistently shows that Tennis Channel's viewers have a [REDACTED] than viewers of Golf Channel and Versus.²¹⁸ In fall 2009, for example, the median household income for Tennis Channel viewers was [REDACTED] that of Golf Channel and Versus [REDACTED].²¹⁹ Tennis Channel's own expert, Timothy Brooks, has acknowledged that Experian Simmons is "widely accepted by the industry,"²²⁰ and Tennis Channel relied on older Experian Simmons median household income data in its pleadings,²²¹ its experts'

²¹⁷ Comcast Exh. 180 at TTCCOM 00020724, 20727; Comcast Exh. 21 at TTCCOM 00035272 [REDACTED] (emphasis supplied); Comcast Exh. 24 at TTCCOM 00002270 (noting that networks on the sports tier [REDACTED] Comcast Exh. 127 at TTCCOM_00019131 [REDACTED]; Comcast Exh. 181 at TTCCOM_00022484 [REDACTED]; Comcast Exh. 217 at TTCCOM 00003380 [REDACTED] (emphasis supplied); Comcast Exh. 268 (Ken Solomon explaining that [REDACTED]); Comcast Exh. 290 at TTCCOM_00033319 [REDACTED] Comcast Exh. 589 at TTCCOM 00086182 (Tennis Channel has [REDACTED] Comcast Exh. 562 [REDACTED] see also Comcast Exh. 517 (Solomon Dep.) 270:21-271:14; Herman Cross, Apr. 26, 2011 623:20-624:12.

²¹⁸ Comcast Exh. 3; Comcast Exh. 77 (Egan Written Direct) ¶¶ 88-89.

²¹⁹ Comcast Exh. 3; Comcast Exh. 77 (Egan Written Direct) ¶¶ 88-90; Egan Cross, Apr. 28, 2011 Tr. 1749:1-18.

²²⁰ Comcast Exh. 349 (Brooks Dep.) 331:10-13.

²²¹ Tennis Channel Exh. 18 (Complaint) ¶ 58.

written testimony,²²² and its presentations to MVPDs and advertisers (including in its 2009 proposal to Comcast).²²³ When newer Experian Simmons data showed Tennis Channel [REDACTED] Golf Channel and Versus in terms of viewer income, however, Tennis Channel switched to other sources of data (Mendelsohn and MRI) portraying Tennis Channel more favorably.²²⁴ Given Tennis Channel's history of relying on Experian Simmons and the consistency of Experian Simmons data over the last four quarters, however, the Experian Simmons data from fall 2009 through summer 2010 should be accorded significant weight.²²⁵ Under these circumstances, the weight of the reliable evidence does not support Tennis Channel's claim that its viewer income is similar to Golf Channel's or Versus's.

88. According to data on viewer age included among Mr. Brooks's "relied upon" materials but not cited in his written testimony, Tennis Channel's viewers are older than those of Versus and approximately ten years younger than those of Golf Channel, which, with a median viewer age of [REDACTED] has one of the oldest audiences in cable television.²²⁶

²²² Tennis Channel Exh. 16 (Singer Written Direct) ¶ 28 n. 46; Tennis Channel Exh. 17 (Brooks Written Direct) ¶ 33 n.24.

²²³ Comcast Exh. 180 at TTCCOM_00020725; *see also* Comcast Exhs. 11, 292.

²²⁴ *See* Tennis Channel Trial Brief at 10; Tennis Channel Exh. 17 (Brooks Written Direct) ¶¶ 31-33, 42-44. The Mendelsohn data cited by Tennis Channel and Mr. Brooks is skewed substantially by the fact that it is based on a survey only of homes with household incomes exceeding \$100,000. (Comcast Exh. 77 (Egan Written Direct) ¶ 84).

²²⁵ Comcast Exh. 3.

²²⁶ Comcast Exh. 77 (Egan Written Direct) ¶¶ 86-87, 89-90; Comcast Exh. 11 at TTCCOM_00027627 [REDACTED]; Goldstein Direct, May 2, 2011 Tr. 2756:10-2757:4 ("Versus and, in fact, the NHL is one of the youngest skewing male oriented networks that we've got."); *see also* Comcast Exh. 230 at TTCCOM_00062366 [REDACTED]

5. *Advertisers do not view Tennis Channel as being substantially similar to Golf Channel or Versus*

89. As Mr. Goldstein credibly opined based on his decades of experience in the advertising industry, advertisers view networks broadcasting different sports differently, because each sport delivers a unique audience.²²⁷ Since most advertisers use sports programming as a way to reach male viewers, Tennis Channel's relatively even gender balance²²⁸ makes the network fundamentally different than the male-skewing Golf Channel and Versus networks from the perspective of advertisers.²²⁹ Tennis Channel's own documents corroborate that testimony. An internal Tennis Channel document shows that the network's former head of advertising sales realized, soon after starting at Tennis Channel, that the significant [REDACTED] of Tennis Channel's audience was a [REDACTED].²³⁰ Other Tennis Channel documents show that the network pitches itself as a [REDACTED] and as [REDACTED] because of its female viewership.²³¹

90. Mr. Goldstein also testified credibly and without contradiction that advertisers also consider the popularity of a sport on television generally, and the primary sports broadcast on Golf Channel and Versus are more popular than tennis, as evidenced

[REDACTED]; Comcast Exh. 216 at TTCCOM_00019368; Comcast Exh. 589 at TTCCOM_00086182).

²²⁷ Comcast Exh. 79 (Goldstein Written Direct) ¶ 19; Comcast Exh. 80 (Orszag Written Direct) ¶¶ 53-54, 63-64.

²²⁸ *See supra* ¶ 86.

²²⁹ Comcast Exh. 79 (Goldstein Written Direct) ¶ 34; Goldstein Direct, May 2, 2011 Tr. 2685:9-18.

²³⁰ Comcast Exh. 559 at TTCCOM_00087674.

²³¹ Comcast Exh. 476 at TTCCOM_00024295; Comcast Exh. 351 at TTCCOM_00042505; Comcast Exh. 352 at TCCOM_00035238; Comcast Exh. 186 at TTCCOM_00062216.

by their ratings on broadcast television.²³² Interest in televised tennis, already limited, is declining, evidenced by the fact that each of the four Grand Slams recently experienced record low or near-record low ratings.²³³ Significantly, Nielsen dropped tennis from its list of major sports in its 2011 annual year in sports review.²³⁴

91. To attempt to demonstrate that advertisers view the three networks as similar, Tennis Channel relied on supposed overlap in advertisers.²³⁵ As Mr. Goldstein testified, however, advertising overlap between networks does not demonstrate that advertisers view the networks as being similar, since advertisers often purchase time on different networks to reach entirely different audiences.²³⁶ Beyond this fundamental flaw, Tennis Channel's analysis suffers from three additional flaws, as demonstrated during the cross-examination of Mr. Gary Herman, Tennis Channel's current head of advertising sales. First, Tennis Channel excluded makers of golf and tennis equipment and other companies most likely to advertise on the networks (so-called endemic advertisers). Mr. Herman conceded that excluding those advertisers inflated the number of overlapping advertisers identified by Tennis Channel.²³⁷ Second, Tennis Channel ignored the actual advertising data produced by the parties, relying instead on Nielsen

²³² Comcast Exh. 79 (Goldstein Written Direct) ¶¶ 23-32, 43; Comcast Exh. 80 (Orszag Written Direct) ¶ 33; Comcast Exh. 77 (Egan Written Direct) ¶ 37.

²³³ Comcast Exh. 79 (Goldstein Written Direct) ¶ 25.

²³⁴ Comcast Exh. 79 (Goldstein Written Direct) ¶ 25; Comcast Exhs 198, 218.

²³⁵ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 29; Tennis Channel Exh. 15 (Herman Written Direct) ¶¶ 7-10.

²³⁶ Comcast Exh. 79 (Goldstein Written Direct) ¶ 40; Comcast Exh. 80 (Orszag Written Direct) ¶¶ 63-64.

²³⁷ Herman Cross, Apr. 26, 2011 Tr. 661:10-22, 662:1-5; Comcast Exh. 368 (Herman Dep.) 250:14-23; *see also* Comcast Exh. 559 at TTCCOM_00087675 (noting the importance of [REDACTED])

AdViews estimates, which report only at the parent company level. The resulting overlap among large, multi-brand advertisers that buy time on the three networks is especially meaningless because, as Mr. Goldstein explained, multi-brand companies “target entirely different audiences.”²³⁸ Third, Mr. Herman testified that Tennis Channel includes in its “overlap” analysis advertisers that it had pitched since 2009 but that never advertised on Tennis Channel.²³⁹ Further, Mr. Herman acknowledged that Tennis Channel has been preparing its case against Comcast since at least early 2009, which – together with Tennis Channel’s inclusion of failed pitches in its overlap analysis – gave Tennis Channel an incentive to pitch advertisers that would not advertise on Tennis Channel.²⁴⁰ In fact, Mr. Herman conceded at his deposition that during this period Tennis Channel pitched advertisers that it knew would not advertise on the network.²⁴¹

92. Tennis Channel shares only a small number of actual advertisers with Golf Channel and Versus.²⁴² Among each network’s top fifty advertisers in 2010, only {REDACTED} advertisers overlapped between Tennis Channel and Golf Channel, and only

²³⁸ Comcast Exh. 79 (Goldstein Written Direct) ¶ 39; Goldstein Direct, May 2, 2011 Tr. 2688:11-19 (advertisers buy “20 to 30 networks deep,” and so “I would expect there to be a certain amount of overlap”).

²³⁹ Tennis Channel Exh. 15 (Herman Written Direct) ¶¶ 8-9.

²⁴⁰ Herman Cross, Apr. 26, 2011 Tr. 662:20-663:19; Comcast Exh. 368 (Herman Dep.) 170:2-20. By excluding endemic advertisers and ignoring the actual advertising data produced by the parties, Tennis Channel has significantly inflated the degree of actual advertising overlap. Tennis Channel claims that {REDACTED} of Golf Channel’s top thirty advertisers in 2010 had also purchased advertising on Tennis Channel since 2009. (Tennis Channel Exh. 15 (Herman Written Direct) Exh. B, at 1). When the actual advertising data for 2010 is used and when endemic advertisers are included, Golf Channel and Tennis Channel only share {REDACTED} of Golf Channel’s top thirty advertisers. (*Compare* Comcast Exh. 211 at TTCCOM_00005162, *with* Comcast Exh. 212 at COMTTC_00046199).

²⁴¹ Comcast Exh. 368 (Herman Dep.) 132:3-6, 139:15-21, 244:2-247:2.

²⁴² Herman Cross, Apr. 26, 2011 Tr. 667:8-15, 669:4-11.

{REDACTED} overlapped between Tennis Channel and Versus.²⁴³ Even if advertiser overlap were a meaningful metric of similarity, Tennis Channel shares more common advertisers with news and lifestyle networks than it shares with Golf Channel, Versus, and other sports networks.²⁴⁴

6. *Tennis Channel's programming costs are substantially less than Golf Channel's or Versus's programming costs*

93. Comcast's economic expert, Mr. Jonathan Orszag, opined that programming cost is a proxy, albeit imperfect, for the viewer appeal and quality of sports content. Mr. Orszag testified that programming costs consist primarily of the cost of acquiring rights to programming, and that the market price of those programming rights will reflect the value of the programming to interested networks.²⁴⁵ According to Kagan – a firm whose data provides a consistent basis for comparing programming costs across networks – Golf Channel spent \$167 million on its programming, while Versus spent \$289 million in 2010.²⁴⁶ In contrast, Tennis Channel spent \$39 million on its programming in 2010 – less than almost any other national sports network.²⁴⁷ In internal documents, Tennis Channel has characterized its Grand Slam coverage as {REDACTED}

²⁴³ Comcast Exh. 211; Comcast Exh. 212; Comcast Exh. 213; Comcast Exh. 665.

²⁴⁴ For example, more of Tennis Channel's top thirty advertisers in 2010 advertised on {REDACTED} than they did on Golf Channel. (Comcast Exh. 801). Similarly, more of those same top thirty advertisers advertised on {REDACTED} than on Versus. (Comcast Exh. 801; Herman Cross, Apr. 26, 2011 Tr. 650:4-651:8, 652:3-653:13).

²⁴⁵ Comcast Exh. 80 (Orszag Written Direct) ¶¶ 36-40; Orszag Cross, Apr. 27, 2011 Tr. 1452:16-1453:18.

²⁴⁶ Comcast Exh. 80 (Orszag Written Direct) ¶ 40; Comcast Exh. 1101; Comcast Exh. 77 (Egan Written Direct) ¶¶ 53, 65.

²⁴⁷ Comcast Exh. 80 (Orszag Written Direct) ¶ 40; Comcast Exh. 1101; Comcast Exh. 77 (Egan Written Direct) ¶¶ 53, 65.

[REDACTED]²⁴⁸ In fact, Tennis Channel pays [REDACTED] for the Australian Open – one of the four premier tennis events.²⁴⁹ Tennis Channel pays [REDACTED] for any of the non-Grand Slam tournaments it airs.²⁵⁰ Mr. Orszag opined that Tennis Channel’s programming expenditures reflect the limited market value of tennis programming rights. That opinion is corroborated by Tennis Channel’s acknowledgment, in an internal document, that it pays no rights fee for the majority of non-Grand Slam tournaments because there is [REDACTED] to air them on television.²⁵¹

7. *Golf Channel and Versus have significantly higher ratings*

94. As an initial matter, Tennis Channel places undue emphasis on ratings. Mr. Egan, an experienced cable programming executive, testified credibly that ratings are not typically a material consideration in an MVPD’s carriage decisions.²⁵² As discussed above, what is important to MVPDs is the intensity of subscriber demand for a network, which leads to the retention and attraction of MVPD subscribers,²⁵³ and ratings do not measure intensity of demand.²⁵⁴

²⁴⁸ Comcast Exh. 127; Solomon Cross, Apr. 25, 2011 Tr. 441:5-21.

²⁴⁹ Comcast Exh. 127.

²⁵⁰ Comcast Exh. 127; *see also* Comcast Exh. 624, Comcast Exh. 517 (Solomon Dep.) 79:23-80:7; Solomon Cross, Apr. 25, 2011 Tr. 440:10-14.

²⁵¹ Comcast Exh. 624; *see also* Comcast Exh. 127; Comcast Exh. 517 (Solomon Dep.) 79:23-80:7; Solomon Cross, Apr. 25, 2011 Tr. 440:8-14.

²⁵² Comcast Exh. 77 (Egan Written Direct) ¶¶ 7, 25; Egan Cross, Apr. 28, 2011 Tr. 1767:18-1773:6.

²⁵³ *Supra* ¶¶ 78-79.

²⁵⁴ Egan Cross, Apr. 28, 2011 Tr. 1768:2-1770:9 (“[A] cable company or a satellite company is in a subscription business. [W]hat they are all about is maintaining, retaining, and acquiring customers. And ratings don’t speak to that.”); *see also* Tennis Channel Exh. 139 (Bond Dep.) at 29:19-24 (“Ratings information can show how many

95. Regardless, the Nielsen local market ratings (i.e., ratings calculated and reported by Nielsen) for Golf Channel and Versus are significantly higher than for Tennis Channel.²⁵⁵

96. The non-Nielsen ratings used by Tennis Channel's expert, Timothy Brooks, are an unreliable basis for comparison. Mr. Brooks did not rely on ratings calculated or reported by Nielsen, but instead relied exclusively on ratings calculated by Tennis Channel, including by Tennis Channel employees with a financial stake in this litigation.²⁵⁶ It is relevant that, as evidenced by internal Tennis Channel documents, Tennis Channel employees previously inflated the network's ratings projections.²⁵⁷

97. Tennis Channel's method for calculating the ratings used by Mr. Brooks inflates Tennis Channel's ratings. All of the ratings calculated by Tennis Channel are "coverage area ratings," which inflate Tennis Channel's ratings relative to total market ratings calculated and published by Nielsen.²⁵⁸ Tennis Channel's use of "coverage area

folks are viewing a particular program, but it doesn't necessarily mean that it's a valuable service to customers or that they value it in the context of their subscription service."); Tennis Channel Exh. 138 (Orszag Dep.) at 206:21-207:02 ("Ratings . . . measure viewership but not the intensity of the viewership. And what MVPDs care about [is] whether people will switch.").

²⁵⁵ Comcast Ex. 152; Comcast Exh. 77 (Egan Written Direct) ¶ 69 n.58. Tennis Channel's ratings cannot be compared using Nielsen national ratings, because Tennis Channel does not purchase them. (Brooks Cross, Apr. 26, 2011 Tr. 724:12-18).

²⁵⁶ Brooks Cross, Apr. 26, 2011 Tr. 726:2-11; Comcast Exh. 349 (Brooks Dep.) 13:8-14:5, 14:23-15:13 (testifying that he relied on Tennis Channel to "pull the [ratings] data for each separate market . . . put all of that information onto spreadsheets, weight it properly by market and market size and distribution by market, and combine it into a single number").

²⁵⁷ See *supra* ¶ 20 n.38.

²⁵⁸ Brooks Cross, Apr. 26, 2011 Tr. 732:6-733:20; Comcast Exh. 349 (Brooks Dep.) 190:12-22 (testifying that the local market ratings for Tennis Channel calculated and reported by Nielsen on a total market basis are "much lower" than ratings for Tennis Channel calculated by Tennis Channel on a "coverage area" basis). Nielsen does not

ratings” also inflates Tennis Channel’s ratings relative to ratings for Golf Channel and Versus. The denominator for a “coverage area rating” is “all homes that can receive that cable network,” and because Tennis Channel reaches significantly fewer homes than either Golf Channel or Versus reaches, Tennis Channel uses a significantly smaller denominator in calculating ratings for itself than it uses in calculating ratings for Golf Channel and Versus.²⁵⁹ Because ratings are a fraction, the use of a smaller denominator for Tennis Channel than for Golf Channel or Versus inflates Tennis Channel’s ratings relative to ratings for Golf Channel and Versus.²⁶⁰ Nielsen has warned that “the coverage area rating for one cable network cannot be compared to another cable network’s coverage area rating.”²⁶¹ Under these circumstances, Mr. Brooks’s use of “coverage area ratings” to compare the three networks is unreliable.

8. *There is no meaningful competition between Tennis Channel and Golf Channel or Versus for programming rights*

98. Tennis Channel did not meaningfully compete for programming rights with Golf Channel or Versus during the relevant time period. There is no competition for programming rights and no programming overlap between Golf Channel and Tennis Channel.²⁶² There is no programming overlap between Tennis Channel and Versus, as

calculate or publish “coverage area ratings” for local markets. As Mr. Brooks testified, Nielsen does not calculate “coverage area ratings” on “a local market basis,” “[s]o if you want a coverage area rating for a local market, you would never turn to Nielsen to do it. I’ve never heard of anybody who did.” (Comcast Exh. 349 (Brooks Dep.) 184:19-185:18).

²⁵⁹ Brooks Cross, Apr. 26, 2011 Tr. 727:2-6; Comcast Exh. 349 (Brooks Dep.) 70:20-23; *see also* Joint Glossary, “Coverage Area Rating.”

²⁶⁰ Brooks Cross, Apr. 26, 2011 Tr. 726:14-730:7.

²⁶¹ Comcast Exh. 911; *see also* Brooks Cross, Apr. 26, 2011 Tr. 740:6-745:12.

²⁶² Comcast Exh. 363 (Singer Dep.) 241:16-242:18.

Versus does not air any tennis programming.²⁶³ Although Versus at one time carried a small amount of tennis, it stopped airing tennis programming because it lost money on tennis.²⁶⁴

99. The very limited extent to which Versus ever considered acquiring any tennis programming rights occurred significantly before and after Tennis Channel's 2009 proposal at issue in this litigation.²⁶⁵ Versus considered acquiring rights to the U.S. Open in late 2006 at the urging of Ken Solomon, Tennis Channel's Chairman and Chief Executive Officer.²⁶⁶ On December 10, 2006, Mr. Solomon e-mailed Jeff Shell, then Comcast's head of programming, to propose a transaction in which Tennis Channel and Versus would [REDACTED] try to get U.S. Open rights from the United States Tennis Association ("USTA") and Tennis Channel would grant Comcast equity in exchange for additional distribution.²⁶⁷ Comcast briefly considered such a three-party deal internally, including a slight variation in which Comcast would use Tennis Channel equity – which would be granted to Comcast under the equity-for-carriage leg of the proposed deal – as consideration for U.S. Open rights, in order to reduce the rights fee that the USTA would demand, but ultimately did not pursue Mr. Solomon's proposed transaction.²⁶⁸

²⁶³ Comcast Exh. 517 (Solomon Dep.) 162:3-10; Tennis Channel Exh. 143 (Shell Dep.) 142:15-143:3; Comcast Exhs. 192, 193, 194.

²⁶⁴ Comcast Exh. 253; Tennis Channel Exh. 143 (Shell Dep.) 142:19-143:7.

²⁶⁵ Tennis Channel Exh. 14 (Solomon Written Direct) ¶ 42; Tennis Channel Exh. 143 (Shell Dep.) 20:23-21:12, 142:2-22; Comcast Exhs. 253, 666.

²⁶⁶ Comcast Exh. 666.

²⁶⁷ Comcast Exh. 666.

²⁶⁸ Tennis Channel Exhs. 32, 34; Donnelly Direct, May 2, 2011 Tr. 2523:5-2525:5, 2531:14-18; Tennis Channel Exh. 143 (Shell Dep.) 23:21-24:16, 24:19-25:9, 31:7-10.

100. In 2007, Versus and ESPN each separately sought the cable rights to the U.S. Open formerly held by the USA Network.²⁶⁹ As Mr. Orszag opined, given that ESPN was a bidder for the U.S. Open rights, it is highly unlikely that Tennis Channel had any effect on the competition for those rights.²⁷⁰ In fact, Tennis Channel [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }²⁷¹

101. ESPN acquired the cable rights to the U.S. Open, and sublicensed a small number of early-round hours to Tennis Channel.²⁷² [REDACTED]

[REDACTED]

[REDACTED] }²⁷³ Versus did not compete for the smaller, less desirable U.S. Open package currently sublicensed by Tennis Channel from ESPN.

Versus considered acquiring USA Network's former package of rights that consisted of

[REDACTED]

[REDACTED] including live coverage of the tournament's later rounds.²⁷⁴ ESPN

²⁶⁹ Tennis Channel Exh. 40.

²⁷⁰ Comcast Exh. 80 (Orszag Written Direct) ¶ 65.

²⁷¹ Comcast Exh. 89 [REDACTED]

[REDACTED] Comcast Exhs. 302, 666.

²⁷² Comcast Exhs. 160, 539; Comcast Exh. 517 (Solomon Dep.) 348:19-350:18.

²⁷³ Comcast Exhs. 482, 539.

²⁷⁴ Tennis Channel Exh. 40 at COMTTC_00011540; Tennis Channel Exh. 143 (Shell Dep.) 21:23-22:15.

currently carries approximately 100 hours of U.S. Open coverage, including 92 hours of live and same-day delayed match coverage.²⁷⁵

102. NBCUniversal's pursuit of Wimbledon rights, which may or may not become available, for Versus is irrelevant to determining whether Comcast discriminated in 2009 or whether Versus was similarly situated to Tennis Channel in 2009 – significantly before Versus became affiliated with NBCU.²⁷⁶ Regardless, the evidence that Comcast did not consider Versus in rejecting Tennis Channel's 2009 proposal is uncontroverted.²⁷⁷

C. Dr. Hal Singer's Opinions and Analyses Raise Serious Questions About Their Validity, Reliability and Bias

103. As set forth below, Dr. Singer's testimony as to several material issues raises serious questions as to the validity, reliability and bias of his opinions and analysis.

1. Dr. Singer's analysis of the Major League networks raises serious questions of reliability and independence

104. Dr. Singer's testimony regarding Comcast's carriage of the Major League networks was inconsistent with his prior testimony in the *NFL v. Comcast* case, exposed as unreliable on cross-examination, and contradicted by unrebutted fact evidence.²⁷⁸

105. In the *NFL v. Comcast* case, Dr. Singer supported the NFL's litigation position by testifying that NBA TV *was not* affiliated with Comcast (and that, as a result,

²⁷⁵ Comcast Exh. 160; Comcast Exh. 77 (Egan Written Direct) ¶ 45.

²⁷⁶ Colloquy, Apr. 27, 2011 Tr. 1415:16-1416:2.

²⁷⁷ Bond Direct, Apr. 29, 2011 Tr. 2127:3-11; Comcast Exh. 78 (Gaiki Written Direct) ¶ 12; Comcast Exh. 130; Comcast Exh. 588.

²⁷⁸ See *NFL Enterprises LLC v. Comcast Cable Commc'ns, LLC*, MB Docket No. 08-214; Comcast Exh. 1048 at ¶ 80 Table 1.

Comcast “relegated” it to its sports tier).²⁷⁹ In this case, Dr. Singer supported Tennis Channel’s litigation position by testifying to the opposite – namely, that NBA TV *was* affiliated with Comcast (and, for that reason, Comcast melted the network from the sports tier to D1) – even though he admitted there was no change in Comcast’s relationship to NBA TV.²⁸⁰ That contradictory testimony, which mirrors the respective litigation positions of Dr. Singer’s clients, raises a serious question of independence.

106. In his testimony, Dr. Singer advanced a “natural experiment,” which he described as follows: When three Major League networks “were not affiliated with Comcast . . . we got to see how Comcast treated them when they were not affiliated. And then we had a period of time in which they were affiliated with Comcast, and we got to see how Comcast treated them after they were affiliated.”²⁸¹ But none of the networks support Dr. Singer’s testimony that the experiment demonstrates discrimination. First, Dr. Singer initially used NBA TV in his “experiment,” but abandoned it during his deposition after realizing that it did not show discrimination.²⁸² Second, Dr. Singer conceded on cross-examination that under his definition of affiliation, NHL Network was affiliated with Comcast both before and after it was melted from the sports tier to D1.²⁸³ Third, Dr. Singer acknowledged that Comcast distributed MLB Network on D1 and owned a minority interest in MLB Network since its launch, so there was never a time

²⁷⁹ Comcast Exh. 1048 at ¶ 80 Table 1; Singer Cross, Apr. 26, 2011 Tr. 933:21-937:12, 938:18-939:9.

²⁸⁰ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 20.

²⁸¹ Singer Direct, Apr. 26, 2011 Tr. 853:5-14; Tennis Channel Exh. 16 (Singer Written Direct) ¶¶ 20, 74.

²⁸² Comcast Exh. 363 (Singer Dep.) 366:14-367:3.

²⁸³ Singer Cross, Apr. 26, 2011 Tr. 943:9-14, 946:5-16, 949:18-21.

that Comcast's affiliation with MLB Network or its distribution of MLB Network changed.²⁸⁴

107. Dr. Singer's expert testimony regarding the Major League networks also is inconsistent with the unrebutted fact testimony showing that Comcast's carriage of those networks was based on legitimate business reasons.²⁸⁵

108. For all of these reasons, Dr. Singer's testimony regarding the Major League networks is not credible.

2. *Dr. Singer improperly relied on analyses prepared by Tennis Channel*

109. Dr. Singer repeatedly relied on information provided by, and analysis conducted by, Tennis Channel and its counsel, without any attempts to verify or confirm their accuracy. Dr. Singer's "anchor event" analysis was prepared by Tennis Channel,²⁸⁶ which created the "raw data" as well as the categories used to organize it.²⁸⁷ Dr. Singer admitted that he did not do any independent investigation of the data, explaining that he "was taking a document that [Tennis Channel] had already created."²⁸⁸ Dr. Singer also relied on an advertiser overlap analysis prepared by Tennis Channel as the basis for his opinion that advertisers view Tennis Channel as being similar to Golf Channel and Versus. Dr. Singer explained that he was "taking [Tennis Channel] at their word . . . I

²⁸⁴ Singer Cross, Apr. 26, 2011 Tr. 952:8-16.

²⁸⁵ See *supra* ¶¶ 61-65.

²⁸⁶ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 52; Comcast Exh. 363 (Singer Dep.) 299:8-300:22.

²⁸⁷ Comcast Exh. 363 (Singer Dep.) 299:8-300:22.

²⁸⁸ Comcast Exh. 363 (Singer Dep.) 299:24-300:22.

confess to that.”²⁸⁹ Because Dr. Singer relied on “anchor event” and advertiser overlap analyses prepared by Tennis Channel, a party in this litigation, rather than his own independent analyses, his testimony based on those analyses is not credible.

3. *The evidence showed that Dr. Singer’s attempt to replicate the FCC staff’s analysis is not credible, and suffers from the same flaws that have led Dr. Singer’s previous analyses to be rejected as biased*

(a) Dr. Singer acknowledged that he did not replicate the FCC staff’s analysis

110. Dr. Singer testified that he replicated the FCC Staff’s analysis described in the Technical Appendix to the Commission’s order approving the Comcast/NBCU transaction, an analysis based on the model developed by Professor Austan Goolsbee.²⁹⁰ The evidence shows, however, that Dr. Singer’s analysis departed extensively from that of the FCC staff, and raises serious questions about its validity and bias.

111. Dr. Singer’s conclusion that Comcast discriminated against Tennis Channel for anticompetitive reasons was based on a simple comparison of sample means.²⁹¹ But in the paper setting forth the framework that Dr. Singer purports to replicate, Professor Goolsbee expressly warned against comparing sample means and wrote that “[w]hat is needed is a multivariate regression framework.”²⁹² When Dr. Singer conducted a multivariate regression analysis “as a sensitivity test,” it showed that

²⁸⁹ Comcast Exh. 363 (Singer Dep.) 226:5-25; Tennis Channel Exh. 16 (Singer Written Direct) ¶ 29.

²⁹⁰ Tennis Channel Exh. 16 (Singer Written Direct) ¶¶ 23-25.

²⁹¹ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 25.

²⁹² Austan Goolsbee, “Vertical Integration and the Market for Broadcast & Cable Television Programming,” (Apr. 2007) at 27-28.

when income is considered among the potential explanatory factors, there is no statistically significant support for his conclusion.²⁹³

112. On direct examination, Dr. Singer testified that his analysis duplicated the FCC Staff's analysis.²⁹⁴ On cross-examination, however, Dr. Singer acknowledged that "I didn't do everything exactly the way the FCC did. I had a different database. I had a different methodology."²⁹⁵ Dr. Singer admitted that while the FCC Staff focused on "changes in the degree of favoritism," he "was looking at the opposite."²⁹⁶ Dr. Singer also testified that that the FCC staff's findings applied specifically to Golf Channel and Versus.²⁹⁷ But the Technical Appendix shows that although the FCC staff analyzed Versus and Golf Channel together with the G4 and Style networks, the staff never separately analyzed Versus, Golf Channel or both networks together.²⁹⁸

(b) As in the Dish Network arbitration, Dr. Singer inappropriately weighted data points

113. Dr. Singer has testified against Comcast in six different proceedings in the last five years, most recently in a 2010 program access arbitration proceeding in which he testified on behalf of Dish Network.²⁹⁹ In that case, Dr. Singer purported to calculate a median penetration level for all regional sports networks on Dish Network. In calculating

²⁹³ Singer Cross, Apr. 27, 2011 Tr. 1148:3-8; Tennis Channel Exh. 16 (Singer Written Direct) ¶ 25 n.28; Singer Cross, Apr. 27, 2011 Tr. 1086:2-22.

²⁹⁴ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 23; Singer Direct, Apr. 26, 2011 Tr. 859:20-860:1.

²⁹⁵ Singer Cross, Apr. 27, 2011 Tr. 1043:2-4.

²⁹⁶ Singer Redirect, Apr. 27, 2011 Tr. 1169:13-20.

²⁹⁷ Tennis Channel Exh. 16 (Singer Written Direct) ¶¶ 22-23, 25.

²⁹⁸ Tennis Channel Exh. 13 ¶¶ 68, 70.

²⁹⁹ Tennis Channel Exh. 16 (Singer Written Direct) Appx. 1, 77-78; Singer Direct, Apr. 26, 2011 Tr. 828:4-9; Singer Cross, Apr. 27, 2011 Tr. 1148:9-20; Comcast Exh. 1047.

the median – the point in a data set at which there are the same number of data points above and below – Dr. Singer collapsed a number of data points that were unfavorable to Dish Network into a single data point, thereby decreasing their weight and leading to a more favorable result for Dish Network.³⁰⁰ In his opinion ruling for Comcast, the arbitrator rejected Dr. Singer’s analysis, reasoning that Dr. Singer’s “analyses raised serious questions as to their validity, reliability and bias.”³⁰¹ The arbitrator also listed seven other “questions . . . identified with Dr. Singer’s regression analysis that made it less credible on the issue of fair market value for the programming in question in this proceeding than [Comcast’s expert’s] testimony.”³⁰²

114. As in the Dish Network arbitration, Dr. Singer’s discrimination analysis here relies on improper weighting.³⁰³ Dr. Singer testified that in computing the means of Comcast’s market shares for each DMA, he effectively weighted each DMA’s market share “based on how many head ends showed up in the DMA.”³⁰⁴ That was improper because a weighted mean – also known as a weighted average – is “an average in which each item in the series being averaged is multiplied by a ‘weight’ relevant to its importance.”³⁰⁵ Yet there is no evidence that the number of head ends within a DMA is relevant to the importance of that DMA.³⁰⁶ To the contrary, Comcast has 80 head ends in

³⁰⁰ Comcast Exh. 1047 at 7-8; Singer Cross, Apr. 27, 2011 Tr. 1148:21-1152:14.

³⁰¹ Comcast Exh. 1047 at 8.

³⁰² Comcast Exh. 1047 at 7 & n.17.

³⁰³ *See supra* ¶ 111.

³⁰⁴ Singer Cross, Apr. 26, 2011 Tr. 960:7-961:18, 964:9-10, 965:1-3, 967:14-16, 969:5-970:10.

³⁰⁵ Comcast Exh. 1010; *see also* Joint Glossary, “Weighted Average.”

³⁰⁶ Singer Cross, Apr. 27, 2011 Tr. 1025:10-1026:6, 1026:22-1027:5.

the Boston-Manchester DMA, so Dr. Singer counted the Boston-Manchester DMA 80 times, while, weighting Philadelphia, a DMA with far more subscribers than Boston-Manchester, 39 times, and Houston, one of the largest Comcast markets, only twice.³⁰⁷ Although Dr. Singer initially asserted that weighting by head end was appropriate because “the head end is representing . . . a rough measure of the number of homes or people who are served,”³⁰⁸ he acknowledged that he had no basis to make such an assertion, as he never examined whether a correlation in fact existed between the number of head ends in a DMA and the number of subscribers in the DMA.³⁰⁹

4. *Dr. Singer’s arguments that the carriage decisions of DIRECTV and Dish Network should be given the “greatest weight” have been rejected by the Commission*

115. Dr. Singer opined that DIRECTV and Dish Network “should be given the greatest weight” in analyzing how other MVPDs carry Tennis Channel, while “out-of-region cable operators . . . are less valuable proxies.”³¹⁰ Dr. Singer offered nearly identical testimony as MASN’s expert during the *MASN-TWC* arbitration: “I wouldn’t put as much weight on what those out of region in terms of nonoverlapping territories with respect to Time Warner are doing. The most important proxy is Time Warner’s in region competitor in North Carolina . . . You want to focus on a handful of out of region competitors that don’t compete with Time Warner.”³¹¹

³⁰⁷ Singer Cross, Apr. 26, 2011 Tr. 972:17-975:20; Comcast Exhs. 1055, 1091.

³⁰⁸ Singer Cross, Apr. 27, 2011 Tr. 1026:2-6.

³⁰⁹ Singer Cross, Apr. 27, 2011 Tr. 1026:22-1027:5.

³¹⁰ Tennis Channel Exh. 16 (Singer Written Direct) ¶¶ 54-55.

³¹¹ Comcast Exh. 1020 at 295:5-14; *see also id.* at 296:4-9 (“[T]he best proxy . . . that Time Warner is facing is DIRECTV and [Dish Network] which competes in the very same market that Time Warner is competing in North Carolina.”).

116. Dr. Singer’s opinion was rejected by the Commission, which held that one should review the carriage decisions of all MVPDs,³¹² that Dish Network and DIRECTV were poor proxies for Time Warner Cable,³¹³ and that the carriage decisions of the out-of-region cable distributors “provide independent evidence that [Time Warner Cable] did not engage in discrimination on the basis of affiliation.”³¹⁴

117. In addition, Dr. Singer’s opinion that Dish Network and DIRECTV, which, respectively, own { } percent and { } percent of Tennis Channel, are the best proxies for Comcast’s carriage decision with respect to Tennis Channel³¹⁵ conflicts with his own testimony that the satellite companies’ equity-for-carriage agreements with Tennis Channel “would make [them] inclined to give it better treatment,”³¹⁶ “has got to influence the extent to which they carry [Tennis Channel],”³¹⁷ and “would have a significant impact” on their carriage of Tennis Channel.³¹⁸

D. Mr. Timothy Brooks’s Opinions and Analyses Raise Serious Questions About Their Independence and Reliability

1. Mr. Brooks improperly relied on ratings calculated by Tennis Channel, not by Nielsen

118. Mr. Brooks’s ratings comparisons did not rely on ratings calculated and published by Nielsen, an independent source. Instead, those comparisons relied exclusively on “coverage area ratings” calculated by Tennis Channel, including by

³¹² *MASN*, 25 FCC Rcd at 18112 ¶ 18 n. 101.

³¹³ *MASN*, 25 FCC Rcd at 18111-12 ¶ 18 & n.101.

³¹⁴ *MASN*, 25 FCC Rcd at 18111-12 ¶ 18.

³¹⁵ Tennis Channel Exh. 16 (Singer Written Direct) ¶ 54.

³¹⁶ Singer Cross, Apr. 27, 2011 Tr. 1105:2-4.

³¹⁷ Singer Cross, Apr. 27, 2011 Tr. 1110:12-13.

³¹⁸ Singer Cross, Apr. 27, 2011 Tr. 1112:6-8.

Tennis Channel employees (Phil Duddy and Steven Badeau) with a financial stake in this litigation.³¹⁹ Those “coverage area ratings” for Tennis Channel that were calculated by Tennis Channel are inflated.³²⁰ Tennis Channel provided the ratings that it calculated to Mr. Brooks “through [Tennis Channel’s] counsel,” and “virtually all communications between [Mr. Brooks] and Mr. Badeau were conducted through counsel.”³²¹ Mr. Brooks’s reliance on ratings calculated by Tennis Channel (rather than Nielsen), and his failure to communicate directly with the individuals at Tennis Channel who calculated the ratings, raise serious questions of independence.

2. *The record shows that Mr. Brooks’s testimony regarding his ratings comparisons was not reliable*

119. As to several material issues, Mr. Brooks’s testimony regarding his ratings comparisons was shown, on cross-examination, not to be accurate. Those inaccuracies raise serious questions about the reliability of his testimony regarding his ratings comparisons.

120. For example, Mr. Brooks testified that he had compared “the absolute size of the audience” for Tennis Channel, Golf Channel and Versus, and that all three networks had the “same size of audience.”³²² But on cross-examination, Mr. Brooks conceded that the “coverage area ratings” that he used to compare Tennis Channel to

³¹⁹ See *supra* ¶ 96. Mr. Brooks “was told” that “all of the data” that Tennis Channel used to calculate ratings was “from Nielsen,” but he did not check it against data reported by Nielsen. (Comcast Exh. 349 (Brooks Dep.) 143:21-144:15). Instead of verifying the data, Mr. Brooks trusted Mr. Badeau because he has known him “for a very long time.” (Comcast Exh. 349 (Brooks Dep.) 144:16-145:3).

³²⁰ See *supra* ¶ 97.

³²¹ Comcast Exh. 349 (Brooks Dep.) 29:5-30:2, 125:1-21.

³²² Brooks Direct, Apr. 26, 2011 Tr. 704:1-11; Brooks Cross, Apr. 26, 2011 Tr. 819:21-5.

Golf Channel and Versus, do not measure *absolute* audience size.³²³ Instead, “coverage area ratings” measure *relative* audience size – i.e., the size of a particular network’s audience relative to the number of homes “that can receive that cable network.”³²⁴

121. In another example, Mr. Brooks testified that he had compared the audience popularity of Tennis Channel with Versus and Golf Channel “where all can be seen,” meaning “households which have the opportunity to tune into any one of these three networks.”³²⁵ But on cross-examination, Mr. Brooks conceded that his comparison was not based on a sample of households that receive all three networks,³²⁶ but rather on a different sample for each network: homes that receive Tennis Channel, homes that receive Versus and homes that receive Golf Channel.³²⁷

122. In yet another example, Mr. Brooks testified that he had undertaken an analysis of the “top rated events” on Tennis Channel and Golf Channel.³²⁸ But Mr. Brooks conceded on cross-examination that in selecting the events that he included in his analysis of “top rated” events, he “did not care whether or not the events from Golf Channel that [he] selected were, in fact, the highest rated events on Golf Channel.”³²⁹ Instead, he considered only what he and Tennis Channel “believe[d]” would be the

³²³ Brooks Cross, Apr. 26, 2011 Tr. 732:3-734:19.

³²⁴ Brooks Cross, Apr. 26, 2011 Tr. 727:9-19; *see also* Comcast Exh. 349 (Brooks Dep.) 70:12-23.

³²⁵ Tennis Channel Exh. 17 (Brooks Written Direct) ¶ 18; Brooks Cross, Apr. 26, 2011 Tr. 736:3-7.

³²⁶ Brooks Cross, Apr. 26, 2011 Tr. 737:2-18.

³²⁷ Brooks Cross, Apr. 26, 2011 Tr. 739:2-15.

³²⁸ Tennis Channel Exh. 17 (Brooks Written Direct) ¶¶ 20-24.

³²⁹ Comcast Exh. 349 (Brooks Dep.) 193:11-17; *see also* Brooks Cross, Apr. 26, 2011 Tr. 751:8-18.

“highest rated” events, without actually looking at the ratings of all events on Golf Channel in order to learn whether the events he considered were, in fact, the highest rated events.³³⁰ For that reason alone, Mr. Brooks’s analysis of “top rated” events on Tennis Channel and Golf Channel is unreliable. In fact, numerous top-rated events on Golf Channel, as measured by Nielsen national ratings, were omitted from Mr. Brooks’s analysis.³³¹

3. *Tennis Channel’s novel methodology for calculating
“coverage area ratings” based on samples
combining numerous local markets is unreliable*

123. The weight of the credible evidence shows that, contrary to Mr. Brooks’s testimony,³³² the samples of combined local markets on which Mr. Brooks relied for his ratings comparisons are not representative of the United States as a whole, and that the “coverage area ratings” calculated by Tennis Channel for those local markets cannot be projected to the United States as a whole.³³³

124. Mr. Brooks has acknowledged that “the most important thing” about a sample is “the representativeness of that sample,”³³⁴ and that to be representative a sample must be chosen “randomly representing all parts – all geographies, representing all ethnicities, representing economic levels, representing the diversity, in other words . . . of the population to which you are going to project.”³³⁵ Indeed, that is why Nielsen goes

³³⁰ Brooks Cross, Apr. 26, 2011 Tr. 747:4-19.

³³¹ Comcast Exhs. 924, 931; Brooks Cross, Apr. 26, 2011 Tr. 767:3-772:8.

³³² Tennis Channel Exh. 17 (Brooks Written Direct) ¶¶ 15-16; Comcast Exh. 349 (Brooks Dep.) 167:11-13.

³³³ See Comcast Exh. 77 (Egan Written Direct) ¶¶ 67, 69.

³³⁴ Comcast Exh. 349 (Brooks Dep.) 90:18-91:1.

³³⁵ Comcast Exh. 349 (Brooks Dep.) 90:18-91:18.